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Robert R. Corbin

November 20, 1980

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ARIZONA ATTORNEY GENERAL

Mr. Max Sullivan, Director
Arizona State Retirement System
Post Office Box 33910
Phoenix, AZ 85067

Re: I80-195 (R80-217)

Dear Mr. Sullivan:

We have considered your question regarding the point at which retirement benefits commence under A.R.S. § 38-781.01 et seq. of the State Retirement Plan. The specific question involves a state university faculty member who made application for a retirement annuity under the Plan. The record reflects that the faculty member's services ended in May of 1980. By personal election, however, the faculty member chose an employment contract which spread out the member's compensation over a 12-month period. The member's pay period, therefore, ended August 15, 1980, even though services terminated in May of 1980. This type of employment contract is in contrast to the other type of teacher contract which generally provides for payment over a nine or ten month period. Under these contracts, compensation ceases when services cease. The relevant statutory provision provides that "retirement benefits shall commence on the first day of the month coinciding with or next following the date of termination of employment." A.R.S. § 38-781.09. The issue for resolution therefore is the meaning of "the date of termination of employment".

After reviewing the applicable legal authorities, we have concluded that an employee terminates employment within the meaning of A.R.S. § 38-781.09 when services are terminated, irrespective of the time and method of compensating the employee. Accordingly, if an employee terminates services with an employer in May of 1980, under A.R.S. § 38-781.09 the retirement benefits shall commence in June of 1980.

We are aware that the Retirement Board has interpreted A.C.R.R. R2-8-19, which states that "services are deemed to be terminated on the last day for which compensation is paid" to mean that retirement benefits should commence only after all

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compensation has been paid for the services. We think that the Board's interpretation does not comport with the express language of the rule. The operative date for the commencement of benefits is the last day "for which compensation is paid," that is, the last day on which services are performed. To express the Board's interpretation, the rule would have to refer to the last day on which compensation is paid.

Our review of the applicable case law reveals one case directly on point and it supports our conclusion. In Purdie v. Jarrett, 222 Ga. 795, 152 S.E.2d 749 (1966), a teacher worked for the school until June; however, payment was spread out over a 12-month period. The pension board contended that the teacher had been improperly paid pension payments for the months of July and August, because the teacher was also being paid compensation for his services. The court rejected this contention and held that the pension payments were properly paid since the compensation received in July and August was actually for services rendered in the prior ten months.

We are in agreement with the result reached in Purdie v. Jarrett, supra, and therefore conclude that "the last day for which compensation is paid" under A.R.S. § 38-781.09 is the last day of services rendered for which a person receives compensation. The critical inquiry is the date at which services of the employee are terminated. The fact that the payment of compensation for those services is delayed for whatever reason is irrelevant.

Sincerely,



BOB CORBIN
Attorney General

BC:SN:lfc